

### Remarks/Arguments

Claims 1-36 and 39 are pending in the application.

I. **Rejections on the Ground of Nonstatutory Obviousness-type Double Patenting**

Claims 1-36 and 39 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21-49 of U.S. Patent No. 6,841,139 ('139 patent). Regarding method Claims 1-30, a terminal disclaimer is filed along with this response. Regarding composition Claims 31-36, and 39, in a telephone interview with the Examiner on July 23, 2007 Applicant clarified that there are no corresponding composition claims in the '139 patent. Furthermore, Applicant asserts that the compositions of claims 31-36, and 39 may be accessible by methods other than those that have been claimed and thus, should not be construed as limited by the method by which they are made, either as described in Claims 1-30 or the methods disclosed in the '139 patent.

The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Claims 1-36 and 39 have also been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 25-30 of U.S. Patent No. 7,029,646 ('646 patent). During the phone interview Applicant clarified that there are no corresponding composition claims in the '646 patent. Furthermore, Applicant asserts that the compositions of claims 31-36, and 39 may be accessible by methods other than those that have been claimed and thus, should not be construed as limited by the method by which they are made, either as described in Claims 1-30 or the methods disclosed in the '646 patent.

Claims 1-36 and 39 have also been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-20 and 30-42 of U.S. Patent No. 6,827,918 ('918 patent). During the phone interview Applicant clarified that there are no corresponding composition claims in the '918 patent. Furthermore, Applicant asserts that the compositions of claims 31-36, and 39 may be accessible by methods other than those that have been claimed and thus, should not be construed as limited by the method by which they are made, either as described in Claims 1-30 or the methods disclosed in the '918 patent.


Only in the interest of expediting prosecution are Claims 31-36, and 39 also disclaimed herein. Because Claims 1-36, and 39 are subject to a terminal disclaimer withdrawal of these rejections are respectfully requested.

If the Examiner has any questions or comments concerning this paper or the present application in general, the Examiner is invited to call the undersigned at (713) 650-2632.

Dated:

10/22/07

Respectfully submitted,

  
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